Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

COEUR d'ALENE TRIBE, in its own right and as the beneficially interested party subject to the trusteeship of the UNITED STATES OF AMERICA; ERNEST L. STENSGAR, LAWRENCE ARIPA, MARGARET JOSE. DOMNICK CURLEY, AL GARRICK, NORMA PEONE and HENRY SIJOHN, individually, in their official capacity and on behalf of all enrolled members of COEUR D'ALENE TRIBE,

Cross Petitioners,

v.

STATE OF IDAHO; PHIL BATT, GOVERNOR; PETE CENARRUSA, SECRETARY OF STATE; ALAN G. LANCE, ATTORNEY GENERAL; J.D. WILLIAMS, CONTROLLER; ANNE FOX, SUPERINTENDENT OF PUBLIC INSTRUCTION; KEITH HIGGINSON, DIRECTOR, DEPT. OF WATER RESOURCES; each individually and in his official capacity; IDAHO STATE BOARD OF LAND COMMISSIONERS; and IDAHO STATE DEPARTMENT OF WATER RESOURCES,

Cross Respondents.

IN THE MATTER OF THE OWNERSHIP OF THE BEDS AND BANKS AND ALL WATERS OF ALL NAVIGABLE WATER COURSES WITHIN THE 1873 COEUR d'ALENE RESERVATION BOUNDARY.

Cross Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

CROSS PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Eleventh Amendment generally bars federal court jurisdiction over claims impacting the "sovereignty" of a state. *Blatchford v. Native Village of Noatak*, 501 U.S. 775 (1991). The Idaho Supreme Court has held quiet title actions regarding property in which the State of Idaho claims an interest asserts "no claim against the sovereignty" of the state. *Lyon v. State*, 283 P.2d 1105, 1106 (ID 1955).

The question presented here is whether the Eleventh Amendment bars a federal court from exercising jurisdiction it would otherwise have over a quiet title action regarding property in which an interest is claimed by a state whose "sovereignty" is not impacted by such quiet title actions.

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CROSS PETITION FOR WRIT OF CERTIORARI

The Coeur d'Alene Tribe and all other above-named respondents, cross petitioners hereby cross petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (State App. at 1) is reported at 42 F.3d 1244. The opinion of the District Court (State App. at 29) is reported at 798 F.Supp. 1443.

JURISDICTION

The Court of Appeals entered its judgment on December 9, 1994. The cross respondents' Petition for Certiorari was received on March 6, 1995. Jurisdiction of this court was timely invoked under 28 U.S.C. § 1254. This cross petition is timely filed pursuant to Supreme Court Rule 12.3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eleventh Amendment of the United States Constitution provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

STATEMENT OF THE CASE

1. Record and Facts

This is an action by a federally recognized Indian Tribe and its leaders against a State, state agencies and state officers. At issue is ownership of the beds, banks and waters of various navigable watercourses. The relief requested below was to quiet title and for declaratory and injunctive relief. 28 U.S.C. §§ 1331 and 1362 conferred jurisdiction.

The State of Idaho and various state agencies and officials were Defendants below and are Cross Respondents in this Court.

The Coeur d'Alene Tribe and tribal officers were Plaintiffs below and are Cross Petitioners here. They will be referred to collectively as Tribe.

This case is before the Court on the skimpiest of records. There is only a Complaint, App. at 3-14 and a FRCP 12(b) Motion to Dismiss, App. at 15-18.

2. Proceedings Below

The proceedings in the District Court were heard on a FRCP 12(b) Motion to Dismiss, App. at 16-18. The District Court held the Eleventh Amendment precluded the Court from considering the Tribe's claim to quiet title and for other relief against the State and state agencies. The District Court held it did have jurisdiction over state officials if they were found to be violating federal law. The District Court then went to the merits of the case on the 12(b) motion, found no violation of federal law, and dismissed the Tribe's case. Petitioner's App. 29-49.

The Court of Appeals also held the Eleventh Amendment precluded the Court from considering the claims to quiet title and for other relief against the State and state agencies. As to state officials the Court of Appeals applied the *Ex Parte Young*, 209 U.S. 123 (1908) analysis and the three-part test of *Florida Dept. of State v. Treasure Salvors, Inc.*, 458 U.S. 670 (1982). The Court held that a portion of the relief requested, enjoining state officials from interfering with tribal interests in the property, was not equivalent to payment of funds from the state treasury and therefore not barred by the Eleventh Amendment. The Court of Appeals carefully refrained from exercising jurisdiction to quiet or to otherwise adjudicate Petitioners' title. Petitioner App. at 4-23. The case was remanded back to the District Court for consideration of the various issues relating to declaratory and injunctive relief sought against the state officials.

3. Relation to *United States v. Idaho*[1]

Between the time this case was argued before the Court of Appeals and the decision, the United States, as trustee for the Tribe, sued the State of Idaho in federal court over the same basic matter that is at issue in this case. *United States v. Idaho*, No. 94-0328 (U.S.D.Ct. ID.), App. at 22-32.[2]

---

[1] Various pleadings from *United States v. Idaho* were filed in *this* case as an appendix to a document titled Notice of Findings which was filed in the Court of Appeals. App. 19-61.

[2] The United State's Complaint is not as expansive as the Tribe's. The Complaint of the United States seeks to quiet title to only a portion of the beds and banks of Lake Coeur d'Alene,

The State of Idaho (Petitioner in this case) answered, admitted jurisdiction, and *counterclaimed*. App. at 33-44. The counterclaim was more expansive than the United States' Complaint.[3] App. at 41 § 6.6(1).

The Tribe moved to intervene (App. at 50-51) and filed a proposed Complaint which raised the issues raised in this case. App. at 52-61. That Motion is still pending in the District Court.

REASONS FOR GRANTING THE WRIT

1. Court of Appeals' decision conflicts with decisions of a state court of last resort and decisions of this Court. S.Ct. Rule 10.1(a)(c).

The Tribe strongly opposes the granting of certiorari in this case. If certiorari is granted, however, it is absolutely essential for a fair resolution of this case that the issue raised in this cross-petition also be considered. If the state's petition for certiorari is denied, this cross-petition should also properly be denied. S.Ct. Rule 13.5.

The decision of the Ninth Circuit below conflicts with the decision of a state court of last resort. The Idaho

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where the Tribe's Complaint includes a larger area, water, and aboriginal title.

[3] That Petitioners' Counterclaim asked the federal court for a judgment "quieting its title to the beds and banks of those portions of Lake Coeur d'Alene and the St. Joe River within the Coeur d'Alene Reservation." App. at 41 § 6.6(1). This placed at issue ownership of the entire lake because if it is held by the United States in trust for the Tribe it is "within the Coeur d'Alene Reservation."

Supreme Court, as the court of last resort in Idaho, has ruled that litigants in a quiet title proceeding pose no claim against the "sovereignty" of the State of Idaho.

> A suit to quiet title to land allegedly owned by appellants and to which the Board of Education of the State of Idaho allegedly asserted claim, is not a claim against the Board of Education, or the state to which it can impose sovereign immunity as a defense. (Citations omitted.).
>
> The appellants by the proceeding [to quiet title] are asserting no claims against sovereignty, but are attempting to retain that which they allegedly own.
>
> Hence the contention that such [quiet title] proceedings deprive the state, its officials or boards, of sovereign rights of immunity is without merit.

Lyon v. State, 283 P.2d 1105, 1106 (Id. 1955).

The Court of Appeals did not treat *Lyon* and its companion case of *Roddy v. State*, 139 P.2d 1005 (1943) as cases defining a limitation on the Petitioner's sovereignty. Instead it treated these as waiver of immunity cases regarding state court procedure. Petitioner App. at 7-8. The Court of Appeals then applied the rule that a state must specifically waive its Eleventh Amendment immunity, citing *Edelman v. Jordan*, 415 U.S. 651, 677 n.19 (1974), Petitioner App. at 8.

The error in the Court of Appeals' reasoning is that *Roddy* and *Lyon* are not waiver cases. They are cases which define one aspect of the state's sovereignty in a narrow and limited way.

Stated in its simplest terms the *Roddy* and *Lyon* holdings stand for the proposition that:

1) quiet title actions regarding property in which the state or state agencies claim an interest pose "no claim against the sovereignty" of the state;

2) the state cannot "interpose sovereignty as a defense"; and

3) there can never be an issue of waiver of a defense that cannot be raised.

Lyon and *Roddy* do not stand for a state law waiver of its own immunity in state court actions. Rather they stand for a state's sovereign right to decide what is part of its sovereignty and what is not. It is difficult to imagine a more basic state right in our system of federalism than a state's sovereign right to decide what is not part of its sovereignty. It is not for the federal judiciary to impose trappings of sovereignty on a state which the state itself chooses to reject.

This distinction is critical because it is protection of state sovereignty which forms the basis of the Eleventh Amendment doctrine as we now know it.

In *Blatchford v. Native Village of Noatak*, 501 U.S. 775 (1991) this Court made clear that concepts of state sovereignty and the limitation that sovereignty imposed on Article III courts was the basis of the current Eleventh Amendment doctrine.

> [T]he states enter the federal system with their sovereignty intact; that the judicial authority in Article III is limited by this sovereignty, and that a state will therefore not be subject to suit in

> federal court unless it has consented to suit, either expressly or in the "plan of convention."

Blatchford v. Native Village of Noatak, 501 U.S. 775, 779 (1991).

The Eleventh Amendment on its face does not bar this action. The Eleventh Amendment doctrine is based on the limit state sovereignty places on Article III courts. But since quiet title actions such as this one do not impact the sovereignty of the State, it necessarily follows that there is no limitation on the jurisdiction of the federal courts in this case. Since the federal court otherwise had jurisdiction, 28 U.S.C. §§ 1331, 1362, it was error to dismiss the action.

CONCLUSION

The State of Idaho has defined one aspect of its sovereignty in a narrow and limited way so that quiet title actions regarding property in which the State claims an interest present no claim against the sovereignty of the State. *Lyon, Roddy*. This Court has explained that the Eleventh Amendment Doctrine is grounded upon the limitation that state sovereignty places on the jurisdiction of Article III courts. Since quiet title actions present no claim against the sovereignty of the State, there is no Eleventh Amendment basis for limiting the jurisdiction of the federal court. The Court of Appeals' decision to the contrary is in conflict with *Roddy* and *Lyon* decisions of the State's court of last resort and in conflict with the *Blatchford* decision of this Court.

The decision of the Court of Appeals affirming the dismissal of the State, the state agencies and the quiet title action should be reversed. The case should be remanded for trial on the merits on all claims against all Defendants.

Respectfully submitted,

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Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO CROSS-PETITION FOR A WRIT OF CERTIORARI

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The State of Idaho and the other named defendants respectfully request the Court to deny the cross-petition for a writ of certiorari seeking review of the decision of the Court of Appeals for the Ninth Circuit in this case. 42 F.3d 1244.

REASONS FOR DENYING THE WRIT

1. Waivers of Eleventh Amendment Immunity Must Be Explicit And Cannot Be Implied From State Court Decisions.

The Cross-Petitioner, Coeur d'Alene Tribe, asserts that Idaho has "limited" its sovereignty in such a way that quiet title claims are not claims against the sovereignty of the state. As discussed below, the Tribe's argument mistakenly interprets Idaho law. But, for purposes of Eleventh Amendment immunity, any limitation on state sovereignty would nonetheless be irrelevant. Despite the Tribe's attempt to distinguish limitations on sovereignty from limitations of sovereign immunity, it is axiomatic that the two concepts are indistinguishable.

The Tribe fails to recognize that state court decisions on the limits of sovereign immunity do not provide guidance in the application of the Eleventh Amendment. This Court has consistently held that a statutory waiver of immunity within a state court system is "not determinative of whether [a state] has relinquished its Eleventh Amendment immunity from suit in the federal courts." *Edelman v. Jordan*, 415 U.S. 651, 677 n. 19 (1974). There is no principled reason for treating judicial waivers of immunity differently. States must be free to define their sovereign immunity for internal purposes without worrying about the effect of such decisions on Eleventh Amendment immunity. "When a state authorizes a suit against itself . . . it is not consonant with our dual system for the Federal courts to be astute to read the consent to embrace Federal as well as state courts." *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47, 54 (1944). The Ninth Circuit correctly refused to "infer a waiver of Eleventh Amendment immunity based on a state court holding that no sovereign immunity

bars its own jurisdiction." 42 F.3d at 1249. The Ninth Circuit's decision is entirely consistent with the Supreme Court's insistence that state waivers of immunity must be "unequivocally expressed," *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 99 (1984), and further review is therefore unnecessary.

2. Idaho Has Never Limited Its Sovereignty So As To Allow Quiet Title Claims To Be Brought Against It In Federal Court.

The Tribe's cross-petition is based on its unfounded belief that the Eleventh Amendment does not apply in this action because the sovereignty of the State of Idaho does not include immunity to claims seeking to quiet title to property. The primary basis for the Tribe's argument is the decision of the Idaho Supreme Court in *Lyon v. State*, 283 P.2d 1105 (Idaho 1955). The Tribe asserts that the following language from *Lyon* limits Idaho's sovereignty so that quiet title actions regarding property in which the State claims an interest present no claim against the sovereignty of the State:

> A suit to quiet title to land allegedly owned by appellants and to which the Board of Education of the State of Idaho allegedly asserts a claim is not a claim against the Board of Education, or the State, to which it can interpose sovereign immunity as a defense. Roddy v. State, 65 Idaho 137, 139 P.2d 1005, and authorities cited therein; State ex rel. Black v. State Board of Education, 33 Idaho 415, 196 P. 201; 59 C.J. 282, Sec. 429; 81 C.J.S., States, § 194, p. 1260; Section 33-3802, subd. (b), I.C. [Idaho Code].
>
> The appellants by the proceedings are asserting no claim against the sovereignty, but are attempting to retain what they allegedly own.

283 P. at 1106.

The Tribe simply misreads *Lyon*. First, it ignores the fact that the appellant in *Lyon* had abandoned all claims against the State, therefore prompting the court to note that it would

"not discuss or decide whether the respondent State of Idaho is immune because of sovereignty from a suit of this nature. . . . " *Id.* Therefore, the court, by definition, was not defining the sovereignty of the State of Idaho, but was merely defining the status of claims against the Board of Education, which were the only claims at issue on appeal.

Moreover, the holding in *Lyon* is not founded on general principles of sovereignty, but on the unique status of the Board of Education. This is readily demonstrated by checking the authorities referenced in *Lyon* as authority for its holding.

One of the primary authorities cited in *Lyon* is *State ex rel. Black v. State Bd. of Education*, 196 P. 201 (Idaho 1921). There, the court undertook an exhaustive analysis of the status of the Board of Education (acting as the Regents of the University of Idaho).[1] The court found that claims against the Board were not claims against the State, for the following reasons:

> [T]he Board of Regents is a constitutional corporation with granted powers, and while functioning within the scope of its authority, is not subject to the control or supervision of any other branch, board or department of the state government, but is a separate entity, and may sue and be sued, with power to contract and discharge indebtedness, with the right to exercise its discretion within the powers granted, without authority to contract indebtedness against the state, and in no sense is a claim against the regents one against the state.

196 P. at 205.

Obviously, the holdings in *Lyon* and *State ex rel. Black* both turn on the unique status of the Board of Education. In both cases, the court pointed out that the Board is sufficiently separate from the State of Idaho so that claims against the Board are not claims "against the sovereignty." The Tribe is

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[1] 196 P. at 202. *See also* Idaho Code § 33-2802 (1981) (Board of Education constitutes Board of Regents of University of Idaho).

simply wrong when it cites Lyon as authority for a general limitation of Idaho's sovereignty.

The other authorities cited in *Lyon* confirm that the *Lyon* court was not limiting the sovereignty of the State of Idaho, but was merely addressing the status of the Board of Education. For example, the statutory provision cited by the court is part of a chapter in the Idaho Code defining the Board of Education, in its role as the regents of the University of Idaho, as a "body politic and corporate and a separate and independent legal entity," and providing that the Board may "sue and be sued." Idaho Code §§ 33-3803, 33-3804(b) (1948).[2] The two citations to *Corpus Juris* and *Corpus Juris Secundum* refer to sections noting that "[a] claim against a state university or a board of regents thereof is not a claim against the state." 59 C.J. *States* § 429 (1932); 81 C.J.S. *States* § 194 (1953). Both sections refer to the decision in *State ex rel. Black* as authority.

The one authority in *Lyon* not specifically addressed to the Board of Education was *Roddy v. State*, 139 P.2d 1005 (Idaho 1943). In *Roddy*, the plaintiff sued state officers to quiet title to warrants issued by a drainage district. The State Auditor claimed the warrants as escheated property, and asserted they were a lien against the plaintiff's real property. The trial court dismissed the State due to the fact that it had not given its consent to be sued, but retained jurisdiction over the State Auditor and other state officials who were named as defendants. *Id.* at 1006. The trial court went on to hold that the warrants had never escheated to the State, and quieted title in the plaintiff. *Id.* at 1007. On appeal, the state officials

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[2] The citation in *Lyon* is to section 33-3802(b) of the 1948 edition of the Idaho Code. That section, however, is simply a definition section defining the term "board." It is much more likely that the reference to 33-3802(b) is a typographical error, and that the intended reference is to 33-3804(b), which provides that the Board of Education may "sue and be sued." Notably, despite the broad language in 33-3804(b) the local federal courts have found that the sovereign immunity of the State Board of Education has not been waived for purposes of the Eleventh Amendment. *Mazur v. Hymas*, 678 F. Supp. 1473 (D. Idaho 1988).

claimed the State was a necessary party, but the appellate court held that the suit was maintainable against the officers. Thus, the *Roddy* decision is nothing more than an application of the well-established rule differentiating suits against officers from suits against the State itself, when the officer's action is alleged to be unconstitutional. While *Roddy* may be broader than this Court's Eleventh Amendment decisions, it does not generally limit Idaho's sovereignty so as to allow quiet title actions against the State, especially when those actions are brought in federal court.

The Ninth Circuit properly refused to rely on *Lyon* and *Roddy* as waivers of Eleventh Amendment immunity. 42 F.3d at 1244. The Ninth Circuit's decision does not conflict with the decisions of other circuits, the decisions of the Idaho Supreme Court, or the decisions of this Court. Under such circumstances, review by writ of certiorari is not warranted.

CONCLUSION

The cross-petition for a writ of certiorari should be denied.

Respectfully submitted.

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